

Message Text

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FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 4304

UNCLAS GENEVA 12510

E. O. 11652: N/A

TAGS: AFIN, AORG, ILO

SUBJECT: ILO: TAX REIMBURSEMENT POLICIES

REF: (A) STATE 293075; (B) STATE 297662

MISSION OBTAINED THE FOLLOWING RESPONSES FROM FELICE MORGENSTERN IN THE ILO LEGAL ADVISER'S OFFICE TO THE QUESTIONS RAISED IN REF A (TO WHICH PARAS 1-8 ARE KEYED):

(1) ILO ITSELF HAS NEVER "AUTHORIZED" THESE THREE LUMP-SUM BENEFITS, BUT SIMPLY ACCEPTED THE UN JOINT STAFF PENSION FUND PRACTICE OF PAYING ALL THREE LUMP-SUM PAYMENTS WHEN ILO JOINED IT IN 1950 (LATER THAN MOST AND AT A TIME WHEN THESE PRACTICES WERE ALREADY ESTABLISHED.

(2) ILO HAS NOT YET HAD OCCASION TO DECIDE WHETHER TO REIMBURSE EMPLOYEES FOR TAXES PAID ON THESE LUMP-SUM PAYMENTS, BUT RECOGNIZES THAT THE UN DOES AND SOME OTHER AGENCIES MAY BE INTERESTED IN DOING SO. THIS COULD AT SOME POINT RAISE A PROBLEM OF EQUALITY OF TREATMENT FOR ILO.

(3) ILO AGREEMENT WITH SWITZERLAND EXPRESSLY PROVIDES THAT NO TAX SHALL BE LEVIED ON LUMP-SUM PAYMENTS TO ILO
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EMPLOYEES (GOS TAKING THE VIEW THAT EXPATRIATES WILL PRESUMABLY DEPART SWITZERLAND PROMPTLY UPON RETIREMENT.) THIS QUESTION IS DIFFICULT FOR ILO TO ANSWER BEYOND THIS SINCE NATIONAL PRACTICE WOULD APPEAR TO RESULT FROM NATIONAL TAX ARRANGEMENTS RATHER THAN FROM THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.

(4) ILO KNOWS OF NO PARTY INTERPRETING THE CONVENTION AS "REQUIRING" EXEMPTION OF PERIODIC PENSION PAYMENTS, ALTHOUGH AUSTRIA DOES NOT TAX INTERNATIONAL PENSIONS AS PART OF ITS OVER-ALL POLICY IN THIS RESPECT (SEE AGREEMENT WITH IAEA FOR EXAMPLE).

(5) NO.

(6) MANY PARTIES TO THE CONVENTION ARE KNOWN TO TAX PENSION PAYMENTS.

(7) ILO HAS MADE NO DETERMINATION. ARTICLE VI.19B OF THE CONVENTION WOULD APPEAR, HOWEVER, TO LOOK TO UN PRACTICES AS THE POINT OF COMPARISON ON ESTABLISHING STANDARDS.

(8) ILO REQUIRES THE SUBMISSION OF INDIVIDUAL TAX RETURNS FOR VERIFICATION.

(9) MORGENSTERN COMMENTED THAT THE PROBLEMS NOW EMERGING ON THIS SUBJECT WERE TO A LARGE EXTENT PROBLEMS CREATED BY THOSE WITHIN AND WITHOUT INTERNATIONAL ORGANIZATIONS WHO HAVE YEARNED TO ACHIEVE "PERFECT JUSTICE", WHICH IS IMPOSSIBLE TO ACHIEVE ON VARIGATED TAX QUESTIONS.

(10) ILO FINDS ITSELF AS ONE OF THE ODD MEN OUT
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(TOGETHER WITH THE BANKS AND FUND) AS A RESULT OF ITS PRACTICE ON THE "FIRST OR LAST INCOME" QUESTION IN COMPUTING REIMBURSEMENT. (ILO REIMBURSES ON THE BASIS OF "FIRST INCOME"; E.G., INDIVIDUAL INCOME MUST BE COMPUTED AS THOUGH THE ILO EMOLUMENTS CONSTITUTED THE FULL FAMILY INCOME FOR PURPOSES OF DEDUCTIONS AND TAX COMPUTATION, WHEREAS THE UN AND MOST OF THE AGENCIES, AS WE UNDERSTAND IT, PERMIT REIMBURSEMENT TO BE COMPUTED ON A TOTAL INCOME BASIS.)

(11) FINALLY, MORGENSTERN REMINDED US (SEE GENEVA 11089) OF THE SERIOUS AND VERY DELICATE PROBLEM RAISED FOR ILO IN CONNECTION WITH TAX REIMBURSEMENTS NOW THAT THE US HAS WITHDRAWN FROM THE ORGANIZATION. ROUGHLY \$170,000 WAS REIMBURSED LAST YEAR. GIVEN THE SCALE OF REIMBURSEMENTS TO US NATIONALS (TOGETHER WITH THE CONTINUING DECLINE OF THE DOLLAR) IT SEEMS INEVITABLE THAT THE PROBLEM WILL HAVE TO BE ILLUMINATED BEFORE THE GOVERNING BODY, WITH PROBABLY AWKWARD CONSEQUENCES, UNLESS SOMETHING CAN BE WORKED OUT WITH THE US BEFOREHAND.
VANDEN HEUVEL

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